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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4478

13 **TRAVIS CASEY MUSSER**
14 **669 Carnation Street**
Palm Springs, CA 92262

A C C U S A T I O N

15 **Pharmacy Technician Registration No.**
16 **TCH 95466**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about October 30, 2009, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 95466 to Travis Casey Musser (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on February 28, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300 of the Code states:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

"...

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

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STATUTORY PROVISIONS

6. Section 477 of the Code states:

As used in this division:

"(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'

"(b) 'License' includes certificate, registration or other means to engage in a business or profession regulated by this code."

7. Section 480 of the Code states:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"...

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

"...

"[3](B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

". . . ."

8. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

1 9. Section 4060 of the Code states:

2 "No person shall possess any controlled substance, except that furnished to a person upon
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
5 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
6 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
7 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
8 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
9 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
10 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
11 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
12 labeled with the name and address of the supplier or producer.

13 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
14 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
15 devices."

16 10. Section 4301 of the Code states:

17 "The board shall take action against any holder of a license who is guilty of unprofessional
18 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
19 Unprofessional conduct shall include, but is not limited to, any of the following:

20 ". . .

21 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
22 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
23 whether the act is a felony or misdemeanor or not.

24 ". . .

25 "(j) The violation of any of the statutes of this state, or any other state, or of the United
26 States regulating controlled substances and dangerous drugs.

27 ". . .

28 "(p) Actions or conduct that would have warranted denial of a license.

“ . . . ”

11. Section 11170 of the Health and Safety Code states:

“No person shall prescribe, administer, or furnish a controlled substance for himself.”

12. Section 11350 of the Health and Safety Code states:

“(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

“ ”
• • • •

DRUGS

13. Fentanyl is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (c)(8) and is a dangerous drug pursuant to Code section 4022.

COSTS

14. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTS

15. Between January 30 and January 31, 2012, Respondent stole two ampules of Fentanyl while working full-time in the Endoscopy Department at Desert Regional Medical Center, a hospital in Palm Springs. The circumstances are as follows:

16. In 2012, Respondent worked as a full time employee in the Endoscopy Department as a GI Lab Technician at Desert Regional Medical Center, a hospital with a pharmacy and an inpatient and outpatient GI lab. At this facility, narcotics were documented on a specific 24 hour

1 record and log. A new log was provided to the GI Lab every day and the balance of narcotics
2 would be verified by a nurse and transcribed onto a new sheet. A nurse would manually count all
3 narcotics at the change of shift and at the close of the day, after the last procedure was completed.

4 17. On January 30, 2012, a shift count was performed for narcotics and the count was
5 accurate at about 5:30 p.m. The next morning, a narcotic count revealed that one ampule (250
6 mcg/5ml) of Fentanyl was missing. Later that day, a second ampule of Fentanyl was discovered
7 missing. The pharmacy inside of the facility was notified, and security reviewed the facility's
8 internal video surveillance footage to determine if any information could be found to explain why
9 the two ampules were missing.

10 18. Surveillance footage revealed that on January 30, at about 6:18 p.m., Respondent
11 went into the GI Lab wearing scrubs, even though he was not scheduled to work that day, and left
12 at 6:22 p.m. No other individual was seen entering the GI Lab until the next day.

13 19. At 7:48 a.m. the following morning, Respondent entered the inpatient GI Lab and left
14 at 8:13 a.m. At 8:15 a.m., Respondent told his supervisor that he was not feeling well, and the
15 supervisor advised Respondent not to return to work for at least two days because at the time the
16 hospital had an outbreak of enterococcus infections and any employee suspected of having this
17 infection was instructed to stay off work. At 8:20 a.m., Respondent clocked out for the day. At
18 about 5:00 p.m., the supervisor saw Respondent come out of the GI Lab restroom.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Act of Moral Turpitude or Dishonesty)**

21 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
22 in that Respondent stole the controlled substance Fentanyl from his place of employment, an act
23 of moral turpitude or dishonesty. The circumstances are described in paragraphs 15-19, above,
24 and are hereby incorporated as if fully set forth herein.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Violation of Law Regulating Controlled Substances**
3 **and Dangerous Drugs)**

4 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (j)
5 in that Respondent possessed the controlled substance and dangerous drug Fentanyl in violation
6 of the law, including Code section 4060; and Health and Safety Code sections 11170 and 11350.
7 The circumstances are described in paragraphs 15-20, above, and are hereby incorporated as if
8 fully set forth herein.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Act Warranting Denial of Licensure)**

11 22. Respondent is subject to disciplinary action under section 4301, subdivision (p), in
12 that he committed an act that would have warranted denial of a license by stealing the controlled
13 substance Fentanyl from his place of employment, an act enumerated in Code section 480,
14 subdivision (a)(2), which is cause for denial of a license to an applicant who committed an act of
15 dishonesty with the intent to substantially benefit himself or substantially injure another. The
16 circumstances are described in paragraphs 15-21, above, and are hereby incorporated as if fully
17 set forth herein.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board of Pharmacy issue a decision:

21 1. Revoking or suspending Pharmacy Technician Registration Number TCH 95466,
22 issued to Travis Casey Musser;

23 2. Ordering Travis Casey Musser to pay the Board of Pharmacy the reasonable costs of
24 the investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: 1/18/13



VIRGINIA HEROLD

Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

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